



January 27, 2006

SENATE BILL No. 353

DIGEST OF SB 353 (Updated January 25, 2006 10:26 am - DI 51)

Citations Affected: IC 5-28; IC 6-2.5; IC 6-3.1; IC 6-6; IC 34-30.

Synopsis: Alternative fuel use and production. Requires the economic development corporation (IEDC) to work with: (1) automobile manufacturers to improve awareness and labeling; and (2) companies to include E85 stations in updates of global positioning navigation software. Grants a credit for the retail sale of E85 base fuel that may be applied against the seller's obligation to remit sales tax collections. Increases the maximum amount of credits that may be granted for biodiesel production, biodiesel blending, and ethanol production and indicates that the IEDC may grant a credit that is less than the maximum permissible statutory credit. Extends the tax credit for the retail sale of blended biodiesel to 2010. Makes changes in certain definitions applicable to gasoline and special fuels tax laws. Grants tort and products liability immunity for the misuse of E85 motor fuel in a vehicle that is not equipped to use E85 motor fuel. Makes related changes.

Effective: Upon passage; January 1, 2005 (retroactive); January 1, 2006 (retroactive); July 1, 2006.

**Weatherwax, Hershman, Gard,
Jackman, Waterman, Drozda,
Young R, Hume, Skinner, Ford,
Lanane**

January 10, 2006, read first time and referred to Committee on Tax and Fiscal Policy.
January 26, 2006, amended, reported favorably — Do Pass.

SB 353—LS 6714/DI 51+



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January 27, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 353

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-6-4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 4. The corporation shall**
4 **work with automobile manufacturers to improve awareness and**
5 **labeling of E85 base fuel and shall work with the appropriate**
6 **companies to include E85 base fuel stations in updates of global**
7 **positioning navigation software.**

8 SECTION 2. IC 6-2.5-7-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a) For purposes of**
10 **The definitions in this section apply throughout** this chapter:

11 **(b)** "Kerosene" has the same meaning as the definition contained in
12 IC 16-44-2-2.

13 **(c)** "Gasoline" has the same meaning as the definition contained in
14 IC 6-6-1.1-103.

15 **(d)** "Special fuel" has the same meaning as the definition contained
16 in IC 6-6-2.5-22.

17 **(e)** "E85" has the meaning set forth in IC 6-6-1.1-103.

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(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(i) the total price per unit; minus

(ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent (\$0.001), determined by the department by determining the product of:

(1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by

(2) the state gross retail tax rate; multiplied by

(3) ninety percent (90%).

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) "Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

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(2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 3. IC 6-2.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the

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1 retail merchant was required to collect state gross retail tax. The retail
 2 merchant shall remit that amount regardless of the amount of state
 3 gross retail tax which he has actually collected under this chapter.
 4 However, the retail merchant is entitled to deduct and retain the
 5 amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

6 (c) A retail merchant is entitled to deduct from the amount of state
 7 gross retail tax required to be remitted under subsection (b) ~~an~~ **the**
 8 amount ~~equal to:~~ **determined under STEP THREE of the following**
 9 **formula:**

10 **STEP ONE: Determine:**

11 ~~(1)~~ **(A)** the sum of the prepayment amounts made during the
 12 period covered by the retail merchant's report; minus

13 ~~(2)~~ **(B)** the sum of prepayment amounts collected by the retail
 14 merchant, in the merchant's capacity as a qualified distributor,
 15 during the period covered by the retail merchant's report.

16 **STEP TWO: Subject to subsection (d), for reporting periods**
 17 **ending before July 1, 2008, determine the product of:**

18 **(A) ten cents (\$0.10); multiplied by**

19 **(B) the number of gallons of E85 sold at retail by the retail**
 20 **merchant during the period covered by the retail**
 21 **merchant's report.**

22 **STEP THREE: Add the amounts determined under STEPS**
 23 **ONE and TWO.**

24 For purposes of this section, a prepayment of the gross retail tax is
 25 presumed to occur on the date on which it is invoiced.

26 **(d) The total amount of deductions allowed under subsection (c)**
 27 **STEP TWO may not exceed two million dollars (\$2,000,000) for all**
 28 **retail merchants in all reporting periods. A retail merchant is not**
 29 **required to apply for an allocation of deductions under subsection**
 30 **(c) STEP TWO. If the department determines that the sum of:**

31 **(1) the deductions that would otherwise be reported under**
 32 **subsection (c) STEP TWO for a reporting period; plus**

33 **(2) the total amount of deductions granted under subsection**

34 **(c) STEP TWO in all preceding reporting periods;**

35 **will exceed two million dollars (\$2,000,000), the department shall**
 36 **publish in the Indiana Register a notice that the deduction**
 37 **program under subsection (c) STEP TWO is terminated after the**
 38 **date specified in the notice and that no additional deductions will**
 39 **be granted for retail transactions occurring after the date specified**
 40 **in the notice.**

41 **SECTION 4. IC 6-3.1-27-0.5 IS ADDED TO THE INDIANA**
 42 **CODE AS A NEW SECTION TO READ AS FOLLOWS**

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[EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 0.5. As used in this chapter, "B20 blended biodiesel" means blended biodiesel nominally consisting of twenty percent (20%) biodiesel (B100) and eighty percent (80%) petroleum diesel.**

SECTION 5. IC 6-3.1-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]:
 Sec. 1. As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification ~~D6751-02~~ **D6751-03a Standard Specification** for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

SECTION 6. IC 6-3.1-27-8, AS AMENDED BY P.L.191-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 8. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of gallons of biodiesel:
 - (A) produced at the Indiana facility during the taxable year; and
 - (B) used to produce blended biodiesel.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section. Subject to subsection (c), the total amount of credits ~~allowed that the corporation may grant to~~ a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.**

(c) Notwithstanding subsection (b), the **corporation may increase the** total amount of credits allowed a taxpayer (or if the person producing biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 7. IC 6-3.1-27-9, AS AMENDED BY P.L.191-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2006 (RETROACTIVE)]: Sec. 9. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
 - (A) produced at the Indiana facility; and
 - (B) blended with biodiesel produced at a facility located in Indiana.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section.** The total amount of credits ~~allowed~~ **that the corporation may grant to** a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.

SECTION 8. IC 6-3.1-27-9.5, AS ADDED BY P.L.191-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 9.5. The total amount of credits allowed under:

- (1) section 8 of this chapter;
- (2) section 9 of this chapter; and
- (3) IC 6-3.1-28;

may not exceed ~~twenty~~ **fifty** million dollars ~~(\$20,000,000)~~ **(\$50,000,000)** for all taxpayers and all taxable years **beginning after December 31, 2004.** The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars (\$4,000,000) for each **type of** credit.

SECTION 9. IC 6-3.1-27-10, AS AMENDED BY P.L.191-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 10. A taxpayer that:

- (1) is a dealer; and
 - (2) distributes at retail blended biodiesel in a taxable year;
- is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the product of:

- (1) one cent (\$0.01); multiplied by
- (2) the total number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

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(c) The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.

(d) A credit under this section may not be taken for blended biodiesel distributed at retail after December 31, ~~2006~~ **2010**.

SECTION 10. IC 6-6-1.1-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]:
Sec. 103. As used in this chapter:

(a) "Administrator" means the administrative head of the department of state revenue or the administrator's designee.

(b) "Dealer" means a person, except a distributor, engaged in the business of selling gasoline in Indiana.

(c) "Department" means the department of state revenue.

(d) "Distributor" means a person who first receives gasoline in Indiana. However, "distributor" does not include the United States or any of its agencies unless their inclusion is permitted under the Constitution and laws of the United States.

(e) "Licensed distributor" means a person holding a valid distributor's license issued by the administrator.

(f) "Marine facility" means a marina or boat livery.

(g) "Gasoline" means:

(1) all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses; and

(2) any liquid, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products with American Society for Testing Materials Designation D-86, shows not less than ten percent (10%) distilled (recovered) below three hundred forty-seven degrees Fahrenheit (347 degrees F) or one hundred seventy-five degrees Centigrade (175 degrees C), and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four degrees Fahrenheit (464 degrees F) or two hundred forty degrees Centigrade (240 degrees C).

However, the term "gasoline" does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit (60 degrees F) or sixteen degrees Centigrade (16 degrees C), and a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute, or denatured, wood, or ethyl alcohol, ether, turpentine, or acetates, unless such product is used as an additive in the manufacture, compounding, or blending of a liquid within subdivision (2) **or is otherwise blended with a**

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liquid described in subdivision (2) (including ethanol used in E85), in which event only the quantity so used is considered gasoline. In addition, "gasoline" does not include those liquids which meet the specifications of subdivision (2) but which are especially designated for use other than as a fuel for internal combustion engines.

(h) "Motor vehicle" means a vehicle, except a vehicle operated on rails, which is propelled by an internal combustion engine or motor and is designed to permit its mobile use on public highways.

(i) "Person" means a natural person, partnership, firm, association, corporation, limited liability company, representative appointed by a court, or the state or its political subdivisions.

(j) "Public highway" means the entire width between boundary lines of every publicly maintained way in Indiana including streets and alleys in cities and towns when any part of the way is open to public use for vehicle travel.

(k) "Taxable marine facility" means a marine facility located on an Indiana lake.

(l) "Taxicab" means a motor vehicle which is:

(1) designed to carry not more than seven (7) individuals, including the driver;

(2) held out to the public for hire at a fare regulated by municipal ordinance and based upon length of trips or time consumed;

(3) not operated over a definite route; and

(4) a part of a commercial enterprise in the business of providing taxicab service.

(m) "Terminal" means a marine or pipeline gasoline facility.

(n) "Metered pump" means a stationary pump having a meter that is capable of measuring the amount of gasoline dispensed through it.

(o) "Billed gallons" means the gallons indicated on an invoice for payment to a supplier.

(p) "Export" for gasoline and fuels taxed in the same manner as gasoline under the origin state's statutes means the sale for export and delivery out of a state by or for the seller that is:

(1) an export by the seller in the origin state; and

(2) an import by the seller in the destination state.

(q) "Import" for gasoline and fuels taxed in the same manner as gasoline under the origin state's statutes means the purchase for export and transportation out of a state by or for the purchaser that

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is:

- (1) an export by the purchaser in the origin state; and
- (2) an import by the purchaser in the destination state.

(r) "Rack" means a dock, platform, or open bay:

- (1) located at a refinery or terminal; and
- (2) having a system of metered pipes and hoses to load fuel into a tank wagon or tank transport.

(s) "E85" means a fuel blend nominally consisting of eighty-five percent (85%) ethanol and fifteen percent (15%) gasoline (as described in subsection (g)(2)) that meets American Society for Testing and Materials standard specification 5798-99 for fuel ethanol for automotive spark-ignition engines (Ed75Ed85).

SECTION 11. IC 6-6-2.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this chapter, "alternative fuel" means a liquefied petroleum gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product, **not including a biodiesel fuel or biodiesel blend**, used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. The term includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

SECTION 12. IC 6-6-2.5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.5. (a) As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specifications D6751-03a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as well as other fuels of the same derivation capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or motorboat.

(b) As used in this chapter, "blended biodiesel" means a blend of biodiesel with petroleum diesel fuel so that the volume percentage of biodiesel in the blend is at least two percent (2%). A biodiesel blend may be described as "Bxx" where "xx" represents the volume percentage of biodiesel fuel. "B2" is the type of biodiesel blend with the least volume percentage of biodiesel fuel, and "B99" is the type of biodiesel fuel with the most volume percentage of biodiesel fuel. The term does not include biodiesel (B100).

SECTION 13. IC 6-6-2.5-3 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "blending" means the mixing of one (1) or more petroleum products, with or without another product, ~~regardless of the original character of the product blended;~~ **excluding biodiesel or blended biodiesel**, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of a de minimis amount of products such as carburetor detergent, oxidation inhibitor, lubricating oil, and greases.

SECTION 14. IC 6-6-2.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. As used in this chapter, "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

Special fuel includes biodiesel and blended biodiesel (as defined in IC 6-6-2.5-1.5). However, the term does not include gasoline (as defined in IC 6-6-1.1-103), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, alternative fuels, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

SECTION 15. IC 34-30-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Immunity for Misuse of E85 Motor Fuel

Sec. 1. (a) As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.

(b) As used in this chapter, "flexible fuel vehicle" means any vehicle that is equipped to operate when fueled entirely by E85.

(c) As used in this chapter, "qualified person or entity" means any person or entity that sells, supplies, distributes, manufactures, or refines E85.

Sec. 2. (a) Except as provided in subsection (b), a qualified person or entity is immune from civil liability for personal injury or property damage resulting from a person fueling any vehicle with E85 that is not a flexible fuel vehicle.

(b) This section does not apply:

- (1) to a qualified person or entity that fails to display all E85 warning signs required by federal or state law; or**

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1 **(2) if a person's injury or property damage is a direct result**
2 **of the gross negligence or willful or wanton misconduct of the**
3 **qualified person or entity.**
4 **SECTION 16. An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senators Skinner, Ford and Lanane be added as coauthors of Senate Bill 353.

WEATHERWAX

 COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 8 through 17, begin a new paragraph and insert:

"SECTION 2. IC 6-2.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a) For purposes of The definitions in this section apply throughout** this chapter:

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

- (i) the total price per unit; minus
- (ii) the state gross retail, Indiana gasoline or special fuel, and

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federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent (\$0.001), determined by the department by determining the product of:

- (1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by
- (2) the state gross retail tax rate; multiplied by
- (3) ninety percent (90%).

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

- (1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or
- (2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) "Qualified distributor" means a distributor who:

- (1) is a licensed distributor under IC 6-6-1.1; and
- (2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

- (1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or
- (2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 3. IC 6-2.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump

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shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- (7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.**

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) ~~an~~ **the** amount ~~equal to:~~ **determined under STEP THREE of the following formula:**

STEP ONE: Determine:

- ~~(1)~~ **(A)** the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- ~~(2)~~ **(B)** the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2008, determine the product of:

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- (A) ten cents (\$0.10); multiplied by
- (B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) **The total amount of deductions allowed under subsection (c) STEP TWO may not exceed two million dollars (\$2,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:**

- (1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus
- (2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

will exceed two million dollars (\$2,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice."

Delete pages 2 through 3.

Page 4, delete lines 1 through 16.

Page 4, line 21, delete "with a" and insert "**nominally consisting of twenty percent (20%)**".

Page 4, line 21, delete "content of at least twenty percent" and insert "**and eighty percent (80%) petroleum diesel.**".

Page 4, delete line 22.

Page 4, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 4. IC 6-3.1-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 1. As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification ~~D6751-02~~ **D6751-03a Standard Specification** for Biodiesel Fuel (B100) Blend Stock ~~for~~ Distillate Fuels.

SECTION 5. IC 6-3.1-27-8, AS AMENDED BY P.L.191-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 8. (a) Subject to section

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9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of gallons of biodiesel:
 - (A) produced at the Indiana facility during the taxable year; and
 - (B) used to produce blended biodiesel.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section.** Subject to subsection (c), the total amount of credits ~~allowed that the corporation may grant to~~ a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.

(c) Notwithstanding subsection (b), the **corporation may increase the** total amount of credits allowed a taxpayer (or if the person producing biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 6. IC 6-3.1-27-9, AS AMENDED BY P.L.191-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 9. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
 - (A) produced at the Indiana facility; and
 - (B) blended with biodiesel produced at a facility located in Indiana.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section.** The total amount of credits ~~allowed that the corporation may~~

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grant to a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years."

Page 4, line 25, delete "(a)".

Page 4, delete lines 35 through 42.

Delete page 5.

Page 6, delete lines 1 through 30.

Page 6, reset in roman line 42.

Page 7, reset in roman lines 1 through 2.

Page 7, line 3, reset in roman "(d)".

Page 7, line 3, delete "(c)".

Page 7, delete lines 5 through 42.

Delete pages 8 through 10.

Page 11, delete lines 1 through 21.

Page 12, line 17, after "used in" insert "**E85**,".

Page 12, delete line 18.

Page 12, line 19, delete "specifications of 40 CFR 79.55),".

Page 13, delete lines 25 through 36, begin a new paragraph and insert:

"(s) "E85" means a fuel blend nominally consisting of eighty-five percent (85%) ethanol and fifteen percent (15%) gasoline (as described in subsection (g)(2)) that meets American Society for Testing and Materials standard specification 5798-99 for fuel ethanol for automotive spark-ignition engines (Ed75Ed85).

SECTION 11. IC 6-6-2.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this chapter, "alternative fuel" means a liquefied petroleum gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product, **not including a biodiesel fuel or biodiesel blend**, used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. The term includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

SECTION 12. IC 6-6-2.5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.5. (a) As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specifications D6751-03a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as well as other fuels of the**

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same derivation capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or motorboat.

(b) As used in this chapter, "blended biodiesel" means a blend of biodiesel with petroleum diesel fuel so that the volume percentage of biodiesel in the blend is at least two percent (2%). A biodiesel blend may be described as "Bxx" where "xx" represents the volume percentage of biodiesel fuel. "B2" is the type of biodiesel blend with the least volume percentage of biodiesel fuel, and "B99" is the type of biodiesel fuel with the most volume percentage of biodiesel fuel. The term does not include biodiesel (B100).

SECTION 13. IC 6-6-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "blending" means the mixing of one (1) or more petroleum products, with or without another product, ~~regardless of the original character of the product blended;~~ **excluding biodiesel or blended biodiesel**, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of a de minimis amount of products such as carburetor detergent, oxidation inhibitor, lubricating oil, and greases.

SECTION 14. IC 6-6-2.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. As used in this chapter, "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

Special fuel includes biodiesel and blended biodiesel (as defined in IC 6-6-2.5-1.5). However, the term does not include gasoline (as defined in IC 6-6-1.1-103), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, alternative fuels, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

SECTION 15. IC 34-30-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Immunity for Misuse of E85 Motor Fuel

Sec. 1. (a) As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.



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(b) As used in this chapter, "flexible fuel vehicle" means any vehicle that is equipped to operate when fueled entirely by E85.

(c) As used in this chapter, "qualified person or entity" means any person or entity that sells, supplies, distributes, manufactures, or refines E85.

Sec. 2. (a) Except as provided in subsection (b), a qualified person or entity is immune from civil liability for personal injury or property damage resulting from a person fueling any vehicle with E85 that is not a flexible fuel vehicle.

(b) This section does not apply:

(1) to a qualified person or entity that fails to display all E85 warning signs required by federal or state law; or

(2) if a person's injury or property damage is a direct result of the gross negligence or willful or wanton misconduct of the qualified person or entity."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 353 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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